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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of RANDY AND
KAOLI BANKS.

RANDY BANKS,

Appellant,

v.

KAOLI BANKS,

Respondent.

E070852

(Super.Ct.No. SWD1501980)

OPINION

APPEAL from the Superior Court of Riverside County. James T. Warren, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Randy Banks, in pro. per., and for Appellant.

No appearance by Respondent.

Randy Banks appeals from a child support order setting his support payment obligation at the guideline amount under Family Code section 4055. He argues the trial court erred by failing to apply the special circumstances exception to the guidelines under Family Code section 4057, subdivision (b). We conclude the trial court did not abuse its discretion and affirm.

I

FACTS

Randy and Kaoli Banks married in December 2011, separated in July or August, 2015, and terminated their marriage on March 11, 2016. The trial court ordered divided custody of their two children. Though the record on appeal does not include the trial court's original award, we can infer the court ordered Randy to pay child support to Kaoli.

On July 10, 2017, Randy filed a request to change the child custody and support orders. After a hearing on that motion, the court ordered the parents have joint legal custody, with physical custody alternating weekly. The court also ordered the parents to claim the children for tax purposes on alternating years.

In April 2018, Randy filed requests to change the child custody and support orders. The parties resolved a dispute over child custody with a child custody recommending counselor on June 18, and the trial court adopted their agreement. The order awarded joint legal custody to both parents, with physical custody again alternating weekly.

At a hearing on June 28, the trial court took up Randy's request to modify the child support order. Randy confirmed his gross monthly income was \$5,739, as reported on his Income and Expense Declaration. He also reported \$3,153 in other nontaxable monthly income. The court imputed a gross monthly income of \$1,820 to Kaoli, attributing to her the ability to work full-time (40 hours a week) at the minimum wage (\$11 per hour).

Randy asked to make a statement in support of his request for the trial court to order less child support than called for by the guidelines. He said, the "Parties have equal timesharing of the children, but petitioner uses 28 percent of gross income or 32 percent of disposable income towards housing for himself and children, which is substantially higher than respondent who has no housing cost. Over the past two years, the respondent received approximately \$147,000 in undisclosed income from her father. In addition to the undisclosed income, she received approximately \$11,000 in undisclosed rental income over the same period. The undisclosed income totals approximately \$158,000 or \$79,000 annually." Randy also said Kaoli works only "ten hours a week, nine months a year," which he said, "is not in accordance with her ability."

The transcript of the hearing does not indicate Randy submitted any evidence to substantiate these claims. Nor does Randy point us to any such evidence in the record on appeal. When the trial court asked Kaoli whether she received regular income from her father, she denied it. She said, "At the beginning of the divorce, [I received] help from my father, yes, but it's not monthly. Not consistent." Asked whether she receives some

sort of support or income from her parents on a regular basis, she responded, “No, Your Honor.”

The trial court applied the guidelines and ordered Randy to pay child support to Kaoli in the amount of \$1,247 a month. “There are two children; there’s a 50/50 timeshare; I have Mrs. Banks filing head of household with three exemptions; her gross monthly income is 1,820, which is currently minimum wage in the State of California, \$11 an hour, which I am imputing to her; I have Mr. Banks filing single with one exemption; his wages and salary are 5,739; I have—also have for him non-taxable income BAH of 3,153. Based upon those numbers, the child support is \$1,247 payable by Mr. Banks to Mrs. Banks.”

Randy filed a timely appeal of the child support order.¹

II

ANALYSIS

Randy argues the trial court erred by refusing to depart from the formula for determining child support set out in the guidelines, under which the trial court ordered him to pay \$1,247 a month to his ex-wife. (Family Code, § 4055, unlabeled statutory citations refer to this code.) Specifically, he argues “[a]pplication of the formula would be unjust or inappropriate due to [the] special circumstance[]” that “both parents have

¹ Though he says he appeals from a final judgment after trial under California Code of Civil Procedure (CCP) section 904.1, subdivision (a)(1), in fact he appeals from an order entered after final judgment under CCP section 904.1, subdivision (a)(2). We construe it as such.

substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.” (§ 4057, subd. (b)(5)(B).)

To support his argument, Randy points to the following allegations. He and his ex-wife have joint custody of their two children, who alternate weeks with their father and their mother. His ex-wife resides in a home she owns outright, whereas he pays for housing. He also contends his ex-wife receives consistent unreported income from her father—about \$79,000 annually. He concludes the trial court should have taken into consideration the disparity of the two parents’ housing costs as well as his ex-wife’s additional income, and found special circumstances warranted departing downward from the guidelines.

Randy’s argument has two basic flaws. First, to obtain a reduction below the guidelines range to a stipulated child support judgment, the party seeking the change must establish the new support amount is warranted by a factual change in circumstances. (*In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1015 [“a ‘change of circumstances’ *must* be demonstrated to obtain a downward modification of the child support order to the applicable guideline level or below”].) Nothing Randy points us to—even his allegations about his ex-wife’s house and additional income—establishes a change of circumstances. The appellate record doesn’t establish the amount of child support the trial court originally ordered. Nor does it establish whether Kaoli acquired the house she lives in after the original support order. As a result, we can’t tell whether

circumstances have changed, even if we were to credit Randy's statements about her resources. For that reason alone, we are required to affirm the trial court's order.

Second, there is no evidence in the record on appeal to support Randy's allegations. His claim that his ex-wife owns a house outright and has no housing expenses is merely an assertion made in argument to the trial court. Moreover, even if she does own the house unencumbered by a mortgage, that doesn't establish she has no housing costs. Homeowners owe property taxes and are responsible for maintaining and repairing their homes. There is similarly no evidence about Randy's own housing expenses. His assertions about his ex-wife's unreported financial assistance are also unsupported. Asked whether she regularly receives support from her father, she denied the allegation. She said her father had helped her immediately after the divorce, but doesn't provide regular assistance. All of this means it is impossible under any standard of review to determine the trial court erred by refusing to depart from the child support guidelines.

But, of course, we *are* held to a standard of review on appeal. "[C]ourts are required to calculate child support in accordance with the mathematical formula set forth in the statute . . . [A]dherence to the guidelines is mandatory, and the trial court may not depart from them except in the special circumstances enumerated in the statutes." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283-284.) The "special circumstances" exception of section 4057, subdivision (b)(5) gives the trial court "considerable discretion to approach unique cases on an ad hoc basis." (*County of Lake*

v. Antoni (1993) 18 Cal.App.4th 1102, 1106.) We review support awards for abuse of discretion. (*Id.* at p. 1105.)

Here, the trial court refused to apply the special circumstances exception to reduce Randy’s child support obligation below the guideline amount. On the record before us, we cannot say the trial court abused its discretion. The appellate record does not contain evidence concerning the relative amounts the parents pay for housing. To the extent Randy relies on the claim that his ex-wife’s father is an ongoing source of income, she denied the claim, and the trial court could have believed her. (*Nichols v. Boswell-Alliance Const. Corp.* (1960) 181 Cal.App.2d 584, 590 [“The testimony of one witness, if credible, is sufficient to support a finding even though all other witnesses testify to the contrary”].) We therefore conclude the trial court acted reasonably and appropriately by awarding child support in accord with the guidelines.

III

DISPOSITION

We affirm the trial court order awarding child support. Respondent did not file a brief, so appellant shall bear his own costs on appeal.

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SLOUGH

Acting P. J.

We concur:

FIELDS

J.

MENETREZ

J.